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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/362,631	07/21/1999	RONALD J. MOSSO	N19.12-0020	7098

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EXAMINER

MAYEKAR, KISHOR

ART UNIT	PAPER NUMBER
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1741

DATE MAILED: 10/17/2002

21

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-21

# Office Action Summary

Application No.  
09/362,631

Applicant(s)  
Mosso et al.

Examiner  
Kishor Mayekar

Art Unit  
1741



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 9, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 20-27 and 52-64 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-27 and 52-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 20 6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, it is preferred to replace "receives product particles ... streams" with --is configured to receive product particles ... streams-- to eliminate reference to method of operating the device.

### *Claim Rejections - 35 USC § 102 and § 103*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. Claims 20-22, 54 and 55 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by AXELBAUM et al. (5,498,446). See abstract; Fig. 1 and Fig. 3.

4. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over AXELBAUM "446. The difference between AXELBAUM and the instant claim is the shape of the filter. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reference's teachings because "changes of size, degree, shape proportion, and sequence of adding ingredients" have been held to be obvious, *In re Rose* 105 USPQ 237; *In re Aller* 105 USPQ 233; *In re Dailey* 149 USPQ 47; *In re Reese* 129 USPQ 402; *In re Gibson* 5 USPQ 230.

5. Claims 20-22, 54, 55, 63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 61-67836 with a full translation provided by Applicant, a reference cited in previous Office action. JP '836's invention is directed to a particle manufacturing apparatus using a laser. JP '836 discloses in Fig. 2 that the apparatus

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comprises a reaction chamber, a plurality of reactant inlets configured to direct a plurality of independent reactant streams toward a plurality of product outlets and a particle collection apparatus connected to each of the product outlets to collect the product particles generated by the reactants from the plurality of reactant inlets. JP '836 further discloses in page 3 of the full translation that the apparatus has the ability to manufacture particles with different particle sizes and composition in a single apparatus over that of prior art's apparatus to the production of particles of the same particle size and of the same type. As such JP '836 contemplates that the use of the apparatus to the production of particles of the same size. The difference between JP '836 and the above claims is the configuration of the particle collection apparatus to receive particles generated from a plurality of reactant streams. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified JP '836's teachings because it has been held that "omission of an element with a corresponding omission of function is within the level of ordinary skill". *In re Wilson* 153 USPQ 740; *In re Larson* 144 USPQ 347; *In re KARLSON* 136 USPQ 184; *In re Portz* 145 USPQ 397;

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*In re Liston* 58 USPQ 481; *In re Porter* 20 USPQ 298. Further, it has been held that "making elements integral was held to have been obvious". *In re Wolfe* 116 USPQ 443.

6. Claims 23, 25-27, 52, 53, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '836. The difference between JP '836 as applied above and the instant claims is the provision of plurality of reaction chambers. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reference's teachings because the motivation to make elements separable was held to have been obvious, *In re Dulberg* 129 USPQ 148.

As to the subject matter of claims 58 and 59, "changes of size, degree, shape proportion, and sequence of adding ingredients" have been held to be obvious, *In re Rose* 105 USPQ 237; *In re Aller* 105 USPQ 233; *In re Dailey* 149 USPQ 47; *In re Reese* 129 USPQ 402; *In re Gibson* 5 USPQ 230.

7. Claims 24, 56, 57, and 60-62 are rejected under 35 U.S.C. 103(a) as being

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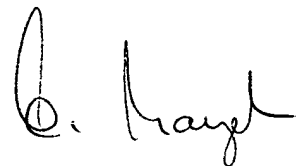
unpatentable over JP '836 as applied to claims 23, 25-27, 52, 53, 58 and 59 above, and further in view of BEATY et al. (5,194,128), another reference cited in previous Office action. The reference further discloses that the reference's invention has the ability to manufacture with different particle sizes and composition besides a single type of powder (see page 3 of the full translation). The difference between the reference and the instant claim is the provision of the recited manifold. BEATY shows the sequential deposition of manufactured particles from individual sources or combinations of particles prior to collection (col. 6, lines 49-66 and Fig. 5). The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the reference's teachings as suggested by BEATY because it has been held that the motivation to make a specific structure is always related to the properties or uses one skilled in the art would expect the structure to have, *In re Newell* 13 USPO 1248, *Fromson v. Advance Offset Plate* 225 USPO 26, *In re Gyurik* 201 USPO 552 and further because this would result in collecting manufactured particles from different individual sources.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kishor Mayekar whose telephone number is (703) 308-0477. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam Nguyen, can be reached on (703) 308-3322. The fax phone number for this Group is (703) 872-9310 (non-after finals) or 872-9311 (after final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Kishor Mayekar  
Primary Examiner  
Group 1700

KM  
October 16, 2002